CASE NUMBER 83-6021

SUPREME COURT OF THE UNITED STATES

TERM 1983-1984

ALAN N. ROGERS,
Plaintiff & Appellant,
v.
TIMOTHY SCOTT FARQUAR,
Defendant & Appellee.

ON APPEAL FROM CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS APPEAL OR AFFIRM

ALAN N. ROGERS
3362 Meade Avenue
San Diego, CA 92116

Appellant

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PRELIMINARY STATEMENT

United States Supreme Court has jurisdiction. (J.S. 3 & 9)* Appeal presents a substantial federal question. (J.S. 8-9) Question sought to be reviewed was timely and properly raised. (J.S. 7-8) Judgment does not rest on an adequate nonfederal basis. (J.S. 1, 3 & 7-9) Judgment should not be affirmed. (J.S. 8-9)

UNITED STATES SUPREME COURT HAS JURISDICTION

This appeal is brought under the authority of Title 28, United States Code, Section 1257(2) where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution of the United States and the decision was in favor of its validity. This confers jurisdiction.

Government Code Sections 855.8(a) and 856(a) are by themselves repugnant to the Fourth Amendment to the United States Constitution since they permit a police officer to seize and search a person without probable cause as required by the Fourth Amendment. The trial judge ruled in favor of the validity of said Government Statutes after plaintiff objected to their constitutionality.

All previous rulings in the case at bar were against said sections providing immunity because of Government Code Sections 855.8(c) and 856(c) and because Government Code Sections 855.8(a) and 856(a) are by themselves unconstitutional.

At trial and during the appeal, the judges either believed California Government Code Sections 855.8(a) and 856(a) were constitutional or failed to deal with said raised issue in their statement.

Since defendant first purported his immunity under said Government Code Sections, plaintiff and appellant objected each time on the ground said statutes violated his constitutional rights. Judges prior to trial agreed with plaintiff. Judges

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* JURISDICTIONAL STATEMENT (filed December 31, 1983)

after that purported Government Code Sections 855.8(a) and 856(a) by themselves were constitutional or they failed to deal with the issue in their statement.

It is obvious the United States Supreme Court has jurisdiction in the above-entitled action.

APPEAL PRESENTS A SUBSTANTIAL FEDERAL QUESTION

The substantial federal question is whether the United States Constitution, Amendment 4, can continue to be offended by the California Courts who have permitted improper immunity in order to wrongfully save the City of San Diego from a loss at trial. (J.S. 8-9)

Plenary consideration is required to put an end to the serious abuses committed by police officers who take people they dislike to a mental facility, without probable cause under Section 5150 of the California Welfare and Institution Code, and then slither out of facing up to the very serious wrong they committed. They slither out by pretending Government Code Sections 855.8(c) and 856(c) do not exist to create an improper absolute immunity based upon Government Code Sections 855.8(a) and 856(a) which is repugnant to the United States Constitution.

Defendant's new attorney is wrong when he purports no substantial federal question was raised because appellant "cites no authority to show that a violation of the Fourth Amendment automatically entitles appellant to money damages in false imprisonment lawsuit under California tort law."

There is a substantial federal question which has been properly raised by appellant.

FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS TIMELY AND PROPERLY RAISED

"Government Code Sections 855.8(a) and 856(a) are by

themselves repugnant to the Fourth Amendment to the United States Constitution and the trial judge ruled in favor of their validity." (J.S. 8) "Government Code Sections 855.8(a) and 856(a) are by themselves repugnant to the Fourth Amendment to the United States Constitution and the trial judge improperly ruled in favor of their validity." (J.S. 9)

The issue regarding the constitutionality of said Government Code Statutes was raised at trial by plaintiff. The trial judge ruled said sections "a" by themselves were constitutional. Defendant's trial attorney Kenneth K.Y. So was present when this occurred.

Defendant's new attorney, who may not have carefully read the Jurisdictional Statement, purports appellant failed to raise the issue of said sections being repugnant to the Constitution in any of the proceedings below. After defendant first purported he was immune under said Government Code Statutes, the question sought to be reviewed was repeatedly raised at all stages including hearings, trial, and appeals.

The issue of repugnancy does not belong in plaintiff's cause of action, as alleged by the new attorney, since the cause of action is plaintiff's complaint for false imprisonment against defendant Farquar.

The appeal itself was made in a timely manner. On October 5, 1983, Petition for Hearing was denied by California Supreme Court. On November 1, 1983, plaintiff and appellant caused Notice of Appeal to Supreme Court of the United States to be served and filed. On November 16, 1983, California Court of Appeal filed said document. This fully complied with the 90 day time factor requirement stated in Title 28, United States Code, Section 2101(c).

JUDGMENT DOES NOT REST ON AN ADEQUATE NONFEDERAL BASIS

Judgment at trial was based on a federal question. The

question is whether a police officer can be improperly permitted immunity from civil litigation for false imrisonment by a trial judge who chooses to ignore California Government Code Sections 855.8(c) and 856(c) and consider only Government Code Sections 855.8(a) and 856(a) which renders California Government Code Sections 855.8 and 856 repugnant to the Fourth Amendment of the United States Constitution. Said sections are repugnant since they permit a police officer to seize and search a person without probable cause required by the Fourth Amendment.

In ruling Government Code Sections 855.8(a) and 856(a) by themselves to be constitutional, the trial judge essentially rewrote Section 5150 of the California Welfare and Institution Code to delete all references to required probable cause. The probable cause requirement must remain a prerequisite in order for a police officer to lawfully take a person into custody and transport him to a mental facility.

The elimination of the required probable cause is a very dangerous precedent leading to continued violations of the constitutional rights of individuals without the possibility of redress of greviences through the judicial system and leading to continued serious criminal misuse of mental facilities.

If the trial judge had ruled Subsections "a" were by themselves unconstitutional rather than constitutional, which would have been consistent with the hearing rulings, then the trial verdict would have been for plaintiff rather than for defendant.

Even if defendant had probable cause to arrest for an offense allegedly committed, which he did not, he must still prove he had probable cause to detain and transport plaintiff under Section 5150 of the California Welfare and Institution Code. If defendant failed to do this, and he did fail, then he would be guilty of falsely imprisoning plaintiff.

Pursuant to Welfare and Institution Code Section 5150, in order to detain and transport plaintiff to a mental facility, plaintiff must have a mental disorder and be a danger to others or a danger to himself or gravely disabled. When this occurs, a peace officer may upon reasonable cause, take a person into custody and transport him to a mental facility. Defendant failed to meet his burden of proof at trial. In fact, plaintiff proved at trial, as set forth in his brief, that defendant did not have probable cause to detain plaintiff and transport him to a mental facility.

Thus, the verdict would have been for plaintiff since defendant did not prove he had probable cause to detain plaintiff and transport him to a mental facility.

JUDGMENT SHOULD NOT BE AFFIRMED

Judgment should not be affirmed. (J.S. 8-9)

Plenary consideration is required to put an end to the serious abuses committed by police officers who take people they dislike to a mental facility, without probable cause under Section 5150 of the California Welfare and Institution Code, and then slither out of facing up to the very serious wrong they committed. They slither out by pretending Government Code Sections 855.8(c) and 856(c) do not exist to create an improper absolute immunity based upon Government Code Sections 855.8(a) and 856(a) which is repugnant to the United States Constitution.

CONCLUSION

Based upon the aforesaid, appellant requests defendant's motion to dismiss appeal or affirm be denied.

Dated: January 23, 1983

Alan N. Rogers

SUPREME COURT OF THE UNITED STATES ~~SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO~~			FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) ALAN N. ROGERS v. TIMOTHY SCOTT FARQUAR			
ATTORNEY(S) NAME AND ADDRESS Alan N. Rogers 3362 Meade Avenue San Diego, CA 92116			
ATTORNEY(S) FOR Plaintiff	TELEPHONE	HEARING DATE-TIME-DEPT	CASE NUMBER 83-6021

DECLARATION OF SERVICE BY MAIL

I, the undersigned declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action, and I am

employed (Residing/Employed) in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business (Residence/Business) address is 150 W. Broadway (No., Street) San Diego, CA (City, State) I served the following document(s) OPPOSITION TO DEFENDANT'S MOTION TO DISMISS APPEAL OR AFIRM (set forth exact title of document(s))

by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Ronald L. Johnson
Kenneth K.Y. So
233 A Street, Suite 300
San Diego, CA 92101

I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at San Diego California, on January 24 19 84.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 24 19 84 at San Diego (Place) California.

Susan Schwartz.
(Signature)

PROOF OF SERVICE BY MAIL

(C.C.P. 1013a and 2015.5)

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